

1 MITCHELL D. GLINER, ESQ.
Nevada Bar #003419
2 3017 West Charleston Blvd., #95
Las Vegas, NV 89102
3 (702) 870-8700
(702) 870-0034 Fax
4 Attorney for Plaintiff

5
6 UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
7

8 BOBBY W. RICHEY,)
)
9 Plaintiff,)
) No.
10 vs.)
)

11 ALESSI & KOENIG, LLC,)
a domestic Limited Liability)
12 Company and SOUTHERN)
HIGHLANDS COMMUNITY)
13 ASSOCIATION, a domestic Non-)
Profit Coop Corp,)
14 Defendants.)

JURY DEMANDED

15
16 COMPLAINT

17 JURISDICTION

18 1. The jurisdiction of this Court attains pursuant to the
19 FDCPA, 15 U.S.C. § 1692k(d), 28 U.S.C. § 1331, 28 U.S.C. § 1332,
20 and the doctrine of supplemental jurisdiction. Venue lies in the
21 Southern Division of the Judicial District of Nevada as Plaintiff's
22 claims arose from acts of the Defendants perpetrated therein.

23 PRELIMINARY STATEMENT

24 2. This action is instituted in accordance with and to
25 remedy Defendants' violations of the Federal Fair Debt Collection
26 Practices Act, 15 U.S.C § 1692 et seq. (hereinafter "FDCPA"), and
27 of related state law obligations brought as supplemental claims
28 hereto.

LAW OFFICES
MITCHELL D. GLINER
3017 W. Charleston Blvd.
Suite 95
Las Vegas, Nevada 89102
(702) 870-8700

1 3. In 2009 Defendants initiated a campaign of abusive,
2 unfair, unreasonable, and unlawful debt collection activity
3 directed against Plaintiff in Las Vegas, Nevada.

4 4. As a result of these and other violations of law,
5 Plaintiff seeks hereby to recover actual and statutory damages
6 together with reasonable attorney's fees and costs.

7 PARTIES

8 5. Plaintiff, Bobby W. Richey, is a natural person who
9 resides in Las Vegas, Nevada, and is a "consumer" as defined by 15
10 U.S.C. Section 1692a(3) and allegedly owes a "debt" as defined by
11 15 U.S.C. Section 1692a(5).

12 6. Defendant, Alessi & Koenig, LLC, (Alessi) is a domestic
13 limited-liability company, the principal purpose of whose business
14 is the collection of debts, operating a debt collection agency from
15 its principal place of business in Las Vegas, NV and regularly
16 collects or attempts to collect debts owed or due or asserted to be
17 owed or due another, and is a "debt collector" as defined by 15
18 U.S.C. Section 1692a(6).

19 7. The Defendant, Southern Highlands Community Association
20 (SHCA) is a domestic corporation.

21 FACTUAL ALLEGATIONS

22 8. Plaintiff repeats, realleges and asserts all factual
23 allegations contained in the preliminary statement to this
24 Complaint and reasserts them as incorporated in full herein.

25 9. In November, 2008, Plaintiff filed a FDCPA action against
26 Alessi Styled Richey v. Alessi & Koenig, LLC, Case No. 2:08-cv-
27 1676-RLH-LRL.

LAW OFFICES
MITCHELL D. GLINER
3017 W. Charleston Blvd.
Suite 95
Las Vegas, Nevada 89102
(702) 870-8700

10. That action amicably settled during May, 2009.

11. On April 29, 2009, Alessi had filed a Release of the delinquent assessment lien it had previously filed on Plaintiff's property.

12. Since then Plaintiff has made every payment to SHCA in a timely fashion.

13. Shortly after Alessi filed its Release SHCA asserted Plaintiff owed \$110.00 in delinquent assessments.

14. Plaintiff provided SHCA proof of his May and June, 2009, payments (Exhibit 1).

15. Plaintiff expressed to SHCA that the problem appeared to be that SHCA *mistakenly* conveyed his May and June, 2009, check to Alessi.

LAW OFFICES
MITCHELL D. GLINER
3017 W. Charleston Blvd.
Suite 95
Las Vegas, Nevada 89102
(702) 870-8700

17. Exhibit 1 reflects Alessi endorsed Plaintiff's May and June, 2009, payments while SHCA endorsed all subsequent payments.

18. On or about May 4, 2010, Alessi dunned Plaintiff demanding payment (Exhibit 2).

19. Plaintiff receives his mail via a Postal Annex and did not receive Exhibit 2 until approximately May 17, 2010.

20. The final paragraph of Defendant's letter threatened additional debt collection activity were Plaintiff to fail to satisfy Defendant's demand by June 8, 2010.

21. Defendant's demand necessarily required Plaintiff to forego his statutory right to challenge the debt in violation of FDCPA § 1692g. Terran v. Kaplan, 109 F.3d 1428, 1434 (9th Cir. 1997).

22. Exhibit 2 also reflects different balances in violation of FDCPA § 1692g(a)(1). Miller v. McCalla, Raymer, Padrick, Cobb, Nichols, and Clark, LLC, 214 F.3d 872 (7th Cir. 2000).

23. The foregoing acts and omissions of Defendants were undertaken by them willfully, maliciously, and intentionally, knowingly, and/or in gross or reckless disregard of the rights of Plaintiff.

24. Indeed, the foregoing acts and omissions of Defendants were undertaken by them indiscriminately and persistently, as part of their regular and routine debt collection efforts, and without regard to or consideration of the identity or rights of Plaintiff.

25. As a proximate result of the foregoing acts and omissions of Defendants, Plaintiff has suffered actual damages and injury, including, but not limited to, stress, humiliation, mental anguish and suffering, and emotional distress, for which Plaintiff should be compensated in an amount to be proven at trial.

26. As a result of the foregoing acts and omissions of Defendants, and in order to punish Defendants for their outrageous and malicious conduct, as well as to deter them from committing similar acts in the future as part of their debt collection efforts, Plaintiff is entitled to recover punitive damages in an amount to be proven at trial.

CAUSES OF ACTION

COUNT I

27. The foregoing acts and omissions of Alessi constitute violations of the FDCPA, including, but not limited to, Sections 1692c, 1692d, 1692e 1692f and 1692g.

LAW OFFICES
MITCHELL D. GLINER
3017 W. Charleston Blvd.
Suite 95
Las Vegas, Nevada 89102
(702) 870-8700

29. The foregoing acts and omissions of Defendants constitute unreasonable debt collection practices in violation of the doctrine of Invasion of Privacy. *Kuhn v. Account Control Technology, Inc.*, 865 F. Supp. 1443, 1448-49 (D. Nev. 1994); *Pittman v. J. J. MacIntyre Co. of Nevada, Inc.*, 969 F. Supp. 609, 613-14 (D. of Nev. 1997).

30. Plaintiff is entitled to recover actual damages as well
as punitive damages in an amount to be proven at trial.

JURY DEMANDED

15 Plaintiff hereby demands trial by a jury on all issues so
16 triable.

17 WHEREFORE, Plaintiff prays that this Honorable Court grant the
18 following relief:

- 19 1. Award actual damages.
- 20 2. Award punitive damages.
- 21 3. Award statutory damages of \$1,000 pursuant to 15 U.S.C.
- 22 § 1692k.

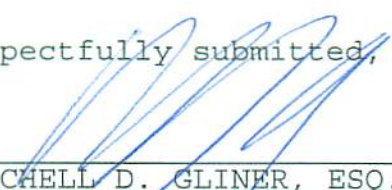
23 | . . .

24 | . . .

25 || . . .

- 1 4. Award reasonable attorney fees.
- 2 5. Award costs.
- 3 6. Grant such other and further relief as it deems just and
- 4 proper.

5 Respectfully submitted,

6 
7 _____
8 MITCHELL D. GLINER, ESQ.
9 Nevada Bar #003419
10 3017 W. Charleston Blvd., #95
11 Las Vegas, NV 89102
12 Attorney for Plaintiff

13 LAW OFFICES
14 MITCHELL D. GLINER
15 3017 W. Charleston Blvd.
16 Suite 95
17 Las Vegas, Nevada 89102
18
19
20
21
22
23
24
25
26
27
28
(702) 870-8700

Wells Fargo Business Online

View Check Copy

| Check Number | Date Posted | Check Amount | Account Number |
|--------------|-------------|--------------|-----------------|
| 1052 | 04/30/09 | \$55.00 | NCHK XXXXXX4176 |

BOBBY W RICHEY
SILVIA RICHEY
38530 BONAIRE WAY
MURRIETA, CA 92563-2548

RECEIVED 11/8/09
APR 22 2009

1052
18-84/1220 9679
966275-4176

Pay to the Order of SILVIA \$55.00
Fifty five Dollars

By [Signature]

For MAY DUES 6025
01220002471: 96627 01052

PAY TO THE ORDER OF
WELLS FARGO BANK, N.E.V.A.D.A., N.
321270742
FOR DEPOSIT ONLY
ALESSI & KOENIG, LLP
ACCT# 8171163847

Equal Housing Lender

© 1995 - 2010 Wells Fargo. All rights reserved.

EXHIBIT 1

Wells Fargo Business Online

View Check Copy

| Check Number | Date Posted | Check Amount | Account Number |
|--------------|-------------|--------------|-----------------|
| 1126 | 06/08/09 | \$55.00 | NCHK XXXXXX4176 |

11887
1126
14-241126 3973
960274176

BOBBY W RICHEY
SILVIA RICHEY
39536 BONAIRE WAY
MURFRETTA, CA 92563-2549

RECEIVED
June 1
JUN 03 2009

Pay to the Order of SNCA \$55.00
fifty five Dollars

For June 2009 6025 PMSD Bobby W Richey
⑆ 622000247⑆ 96627 ⑆ 0112⑆

PAY TO THE ORDER OF
WELLS FARGO BANK, N.E.V.A.C.A., N.J.
3212/0742
FOR DEPOSIT ONLY
ALESSI & KOENIG, LLP
ACCT# 6171169047

Equal Housing Lender

© 1995 - 2010 Wells Fargo. All rights reserved.

Wells Fargo Business Online™

View Check Copy

| Check Number | Date Posted | Check Amount | Account Number |
|--------------|-------------|--------------|-----------------|
| 1138 | 07/22/09 | \$110.00 | NCHK XXXXXX4176 |

| | |
|---|---------------------------------------|
| BOBBY W RICHEY SILVIA RICHEY 29030 BONAFIE WAY MURRIETA, CA 92563-2549 | 1138 16-2471220 5673 8082734176 |
| 7/7/09 | |
| JUL 09 2009 | |
| Pay to the Order of S.H.C.A. | RECEIVED \$110.00 |
| One hundred ten | |
| 6025 | |
| July/Aug One Release | Bobby W Richey |
| 12220002470 96627 | 01138 |

130828892 87222889 >863113222< Colonial

PAY TO THE ORDER OF
COLONIAL BANK - LAS VEGAS
LAS VEGAS, NV 89102
122401781
FOR DEPOSIT ONLY
SOUTHERN HIGHLANDS ASSOC.
OPENING
83001073

Equal Housing Lender

© 1995 - 2010 Wells Fargo. All rights reserved.

DAVID ALESSI*
THOMAS BAYARD *
ROBERT KOENIG**
RYAN KERBOW***

* Admitted to the California Bar

** Admitted to the California, Nevada
and Colorado Bars

*** Admitted to the Nevada and California Bar



A Multi-Jurisdictional Law Firm

9500 W. Flamingo Road, Suite 100
Las Vegas, Nevada 89147
Telephone: 702-222-4033
Facsimile: 702-222-4043
www.alessikoenig.com

ADDITIONAL OFFICES

AGOURA HILLS CA
PHONE: 818-735-9600

RENO NV
PHONE: 775-626-2323

DIAMOND BAR CA
PHONE: 909-843-6590

Nevada Licensed Qualified Collection Manager
AMANDA LOWER

May 4, 2010

LIEN LETTER

VIA REGULAR AND CERTIFIED MAIL

Bobby Wayne Richey
40335 Winchester Rd #E-189
Temecula, CA 92591

Re: Southern Highlands Community Association/6025 Raboso Dr/HO #21942

Dear Bobby Wayne Richey:

Please find the enclosed Notice of Delinquent Assessment (Lien), signed and dated on behalf of **Southern Highlands Community Association** on **May 4, 2010**. The total amount due by **June 8, 2010** is **\$854.12**. Please note that the total amount due may differ from the amount shown on the enclosed lien. Please submit payment to our **Nevada** mailing address listed below by **June 8, 2010**. Payment must be in the form of a cashier's check or money order and made payable to **Alessi & Koenig**.

Unless you, within thirty days after receipt of this notice, dispute the validity of this debt, or any portion thereof, our office will assume the debt is valid. If you notify our office in writing within the thirty-day period that the debt, or any portion thereof, is disputed, we will obtain verification of the debt and a copy of such verification will be mailed to you. Upon receipt of your written request within the thirty-day period, we will provide you with the name and address of the original creditor, if different from the current creditor. Please be advised that you have the right to inspect the association records.

In the event Alessi & Koenig, LLC does not receive payment of your unpaid assessments, fees and costs of **\$854.12** by **June 8, 2010**, a Notice of Default will be recorded in the office of the County Recorder; resulting in additional fees and costs. Should you fail to reinstate your account, you could lose ownership of your property.

Sincerely,

ALESSI & KOENIG, LLC
Aileen Ruiz, Legal Assistant

EXHIBIT 2



Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose.

When recorded return to:

ALESSI & KOENIG, LLC
9500 W. Flamingo Rd., Suite 100
Las Vegas, Nevada 89147
Phone: (702) 222-4033

A.P.N. 176-36-417-050

Trustee Sale # **SH-6025-N**

NOTICE OF DELINQUENT ASSESSMENT (LIEN)

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the official records of **Clark County, Nevada, Southern Highlands Community Association HOA** has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as **6025 Raboso Dr , Las Vegas, NV 89141** and more particularly legally described as: **Lot 71 Block 2 Book 105 Page 52** in the County of **Clark**.

The owner(s) of record as reflected on the public record as of today's date is (are): **Bobby Wayne Richey**

The mailing address(es) is: **40335 Winchester Rd #E-189, Temecula, CA 92591**

The total amount due through today's date is: **\$799.12**. Of this total amount **\$735.00** represent Collection and/or Attorney fees, assessments, interest, late fees and service charges. **\$64.12** represent collection costs. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

Date: **May 4, 2010**

By:

Aileen Ruiz - Legal Assistant

Alessi & Koenig, LLC on behalf of Southern Highlands Community Association

State of Nevada

County of Clark

SUBSCRIBED and SWORN before me **May 4, 2010**

(Seal)

(Signature)

NOTARY PUBLIC

